

SENATE BILL 2472

By Miller J

AN ACT to amend Tennessee Code Annotated, Title 13, relative to local governance.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 13, is amended by adding Sections 2 through 14 of this act as a new, appropriately designated chapter.

SECTION 2. Local governments are of vital importance to the state of Tennessee and its citizenry; therefore, the state has an essential public interest in promoting, developing, sustaining and assisting local governments in achieving higher levels of efficiency, effectiveness and economy. The natural resources, environment and vital areas of the state are also of critical importance to the state and its citizenry; therefore, the state has an essential public interest in protecting and preserving the natural resources, the environment and the vital areas of the state. The purpose of this act is to provide for local governance to serve these essential public interests of the state by authorizing and promoting the establishment, implementation and performance of coordinated and comprehensive planning by municipal and county governments.

SECTION 3. As used in this chapter, the term:

(1) "Comprehensive plan" means any plan by a county or municipality proposed or prepared pursuant to the minimum standards and procedures for comprehensive plans and for implementation of comprehensive plans.

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(2) "Coordinated and comprehensive planning" means planning by counties and municipalities undertaken in accordance with the minimum standards and procedures for preparation of plans, for implementation of plans, and for participation in the coordinated and comprehensive planning process.

(3) "County" means any county of this state.

(4) "Department" means the department of economic and community development.

(5) "Governing authority" or "governing body" means the chief legislative body of a county or municipality or the board of a utility district.

(A) "Inactive municipality" means any municipality which has not for a period of three (3) consecutive calendar years carried out any of the following activities:

(i) The levying or collecting of any property taxes;

(ii) The provision of any of the following governmental services: water; sewage; garbage collection; police protection; fire protection; or library; or

(iii) The holding of a municipal election.

(B) "Local government" means any county or municipality.

(C) "Mechanisms" includes, but is not limited to, intergovernmental agreements, ordinances, resolutions and private acts of the general assembly in effect on July 1, 1998, or executed thereafter.

(6) "Minimum standards and procedures" means the minimum standards and procedures for preparation of comprehensive plans, for implementation of comprehensive plans and for participation in the coordinated and comprehensive planning process, as established by the department in accordance with the provisions of this act. "Minimum standards and procedures" shall include any standards and

procedures for such purposes prescribed by a development district board for counties and municipalities within its district and approved in advance by the department.

(7) "Municipality" means any municipal corporation and any metropolitan form of government.

(8) "Region" means the territorial area within the boundaries of any development district established pursuant to title 13, chapter 14.

(9) "Regional development center" means a regional development center designated as such by the development district and the department.

SECTION 4. The governing bodies of municipalities, counties and utility districts are authorized:

(1) To develop or to cause to be developed, pursuant to a contract or other arrangement approved by the governing body, a comprehensive plan;

(2) To develop, establish and implement land use regulations which are consistent with the comprehensive plan of the municipality or county;

(3) To develop, establish and implement a plan for capital improvements which conforms to minimum standards and procedures and to make any capital improvements plan a part of the comprehensive plan of the municipality or county;

(4) To employ personnel, or to enter into contracts with a regional development center or other public or private entity, to assist the municipality or county in developing, establishing and implementing its comprehensive plan;

(5) To contract with one or more counties or municipalities, or both, for assistance in developing, establishing and implementing a comprehensive plan, regardless of whether the contract is to obtain such assistance or to provide such assistance; and

(6) To take all action necessary or desirable to further the policy of the state for coordinated and comprehensive planning, without regard for whether any such action is specifically mentioned in this act or is otherwise specifically granted by law.

SECTION 5.

(a) Except as provided in subsection (b), nothing in this act shall limit or compromise the right of the governing body of any county or municipality to exercise the power of zoning.

(b) Any municipality which is as of July 1, 1998, an inactive municipality shall not on or after July 1, 1998, exercise any powers under this act or exercise any zoning powers. Any municipality which becomes an inactive municipality after July 1, 1998, shall not after becoming inactive exercise powers under this act or exercise any zoning powers.

(c) Any county which has located within its boundaries all or any part of any inactive municipality shall have full authority to exercise through its governing body all planning and zoning powers within the area of such inactive municipality within the county in the same manner as if such area were an unincorporated area.

SECTION 6. The intent of this act is to provide a flexible framework within which local governments in each county can develop a service delivery system that is both efficient, economical and responsive to citizens in their county. The general assembly recognizes that the unique characteristics of each county throughout the state preclude a mandated legislative outcome for the delivery of services in every county. The process provided by this act is intended to minimize inefficiencies resulting from duplication of services and competition between local governments and to provide a mechanism to resolve disputes over local government service delivery funding equity and land use. The local government service delivery process should result in the minimization of noncompatible municipal and county land use plans and in a simple, concise agreement describing which local governments will provide which service in specified areas within a county and how provision of such services will be funded.

SECTION 7. Each county and municipality shall execute an agreement for the implementation of a local government service delivery strategy by July 1, 2002.

SECTION 8. Each county shall initiate the process for developing a local government service delivery strategy after July 1, 1998, but no later than January 1, 1999. Initiation of the strategy shall be accomplished by the provision of a written notice from the county to the governing bodies of all municipalities and utility districts located wholly or partially within the county or providing services within the county and to any other municipalities or counties providing services within the county.

Such notice shall state the date, time and place for a joint meeting at which designated representatives of all local governing bodies shall assemble for the purpose of commencing deliberations on the service delivery strategy. The notice shall be sent not more than forty-five (45) and not less than fifteen (15) days prior to the meeting date. In the event the county governing authority fails to initiate the process by January 1, 1999, any municipality within the county may do so by sending a written notice, containing the required information, to the county and all other municipalities and utility districts.

SECTION 9. Each local government service delivery strategy shall include the following minimum components:

(1) Identification of all local government services presently provided or primarily funded by each local government and each utility district within the county or providing services within the county, and a description of the geographic area in which the identified services are provided;

(2) Assignment of which local government or utility district pursuant to the requirements of this act, will provide each service, the geographic areas of the county in which such services are to be provided, and a description of any services to be provided by any local government to any geographic area outside its geographical boundaries. In the event two (2) or more local governments within the county are assigned

responsibility for providing identical services within the same geographic area, the strategy shall include an explanation of such arrangement;

(3) Description of the source of the funding for each service identified pursuant to item (2); and

(4) Identification of the mechanisms to be utilized to facilitate the implementation of the services and funding responsibilities identified pursuant to items (2) and (3).

SECTION 10. In the development of a service delivery strategy the following minimum criteria shall be met:

(1) The strategy shall promote the delivery of local government services in the most efficient, economical, effective and responsive manner. The strategy shall identify steps which will be taken to remediate or avoid overlapping and unnecessary competition and duplication of service delivery and shall identify the time frame in which such steps shall be taken. When a municipality provides a service at a higher level than the base level of service provided throughout the geographic area of the county, such service shall not be considered a duplication of the county service;

(2) (A) The strategy shall provide that water or sewer fees charged to customers located outside the geographic boundaries of a service provider shall not be arbitrarily higher than the fees charged to customers receiving such service which are located within the geographic boundaries of the service provider.

(B) If a governing authority disputes the reasonableness of water and sewer rate differentials imposed within its jurisdiction by another governing authority that disputing governing authority may hold a public hearing for the purpose of reviewing the rate differential. Following the preparation of a rate study by a qualified engineer, the governing authority may challenge the arbitrary rate differentials on behalf of its residents in a court of competent jurisdiction.

Prior to such challenge, the dispute shall be submitted to some form of alternative dispute resolution;

(3) (A) The strategy shall ensure that the cost of any service which a county provides primarily for the benefit of the unincorporated area of the county shall be borne by the unincorporated area residents, individuals and property owners who receive the service. Further, when the county and one or more municipalities jointly fund a county-wide service, the county share of such funding shall be borne by free unincorporated residents, individuals and property owners that receive the service.

(B) Such funding shall be derived from special service districts created by the county in which property taxes, insurance premium taxes, assessments or user fees are levied or imposed or through such other mechanism agreed upon by the affected parties which complies with the intent of subitem (3)(A); and

(4) (A) Local governments within the same county shall, if necessary, amend their land use plans so that such plans are compatible and non-conflicting, or, as an alternative, they shall adopt a single land use plan for the unincorporated and incorporated areas of the county.

(4) The provision of extraterritorial water and sewer services by any jurisdiction shall be consistent with all applicable land use plans and ordinances.

(5) A process shall be established by July 1, 2000, to resolve land use classification disputes when a county objects to the proposed land use of an area to be annexed into a municipality within the county.

SECTION 11.

(a) Approval of the local government service delivery strategy shall be accomplished as provided for in this section.

(b) The county and each municipality and utility district within the county shall participate in the development of the strategy. Approval of the strategy shall be accomplished by adoption of a resolution:

(1) By the county governing authority;

(2) By the governing authority of municipalities located within the county which have a population of nine thousand (9,000) or greater within the county;

(3) By the municipality which serves as the county seat if not included in subdivision (2); and

(4) By no less than fifty percent (50%) of the remaining municipalities within the county which contain at least five hundred (500) persons within the county if not included in subdivisions (2) or (3).

(c) For the purpose of determining populations the population in the most recent United States decennial census shall be utilized.

(d) If a county and the necessary number of cities in the county cannot reach an agreement on the strategy, a means for facilitating an agreement through some form of alternative dispute resolution shall be employed. Where the alternative dispute resolution action is unsuccessful, the neutral party or parties shall prepare a report which shall be provided to each governing authority and made a public record. The cost of alternative dispute resolution authorized by this subsection shall be shared by the parties to the dispute pro rata based on each party's population according to the most recent United States decennial census. The county's share shall be based upon the unincorporated population of the county.

(e) The adoption of a service delivery strategy specified in Section 7 may be extended to a date certain no later than one hundred twenty (120) days following July 1, 2002, upon written agreement of the local governments enumerated in subsection (b). In

the event such an agreement is executed, the sanctions specified in Section 13 shall not apply until on and after such extended date.

SECTION 12. Each county shall file the agreement for the implementation of strategy required by Section 7 with the department. The department shall, within thirty (30) days of receipt, verify that the strategy includes the minimum components enumerated in Section 9 and the minimum criteria enumerated in Section 10. The department, however, shall neither approve nor disapprove the specific elements or outcomes of the strategy.

SECTION 13. On and after July 1, 2002, no state administered financial assistance or grant, loan, or permit shall be issued to any local government or utility district which is not included in a department verified strategy or for any project which is inconsistent with such strategy.

SECTION 14. Each county and municipality shall review, and revise if necessary, the approved strategy:

- (1) In conjunction with updates of the comprehensive plan as required by this act;
- (2) Whenever necessary to change service delivery or revenue distribution arrangements; or
- (3) In the event of the creation, abolition, or consolidation of local governments.

SECTION 15. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 16. This act shall take effect on July 1, 1998, the public welfare requiring it.